K.S. DAS

v.

P. SUPPIAH

SUPREME COURT, KUALA LUMPUR
SALLEH ABAS LP
MOHD. AZMI SCJ
WAN HAMZAH SCJ
[CIVIL APPEAL NO. 459 OF 1987]
25 MAY 1988

CIVIL PROCEDURE: *Registration of Judgment obtained in Singapore in the Johor Bahru High Court - Reciprocal Enforcement of Judgments Act 1958 - Setting aside - Sections 4(1)(a), 5(1) of the Act.*

On 5 May 1975 the respondent obtained Judgment in the Singapore High Court against the appellant and on 26 August 1975 the respondent obtained an order in the Johor Bahru High Court for the registration of that judgment under the Reciprocal Enforcement of Judgments Act 1958.

On 7 June 1987 the appellant applied in the Johor Bahru High Court for an order to set aside the registration of the judgment on the ground that it had been fully satisfied when land held under Certificate of Title No. 13817 Mukim of Senai in the State of Johor was transferred to the respondent on 22 July 1975 i.e., about 2 months after the Judgment was pronounced and about one month before the respondent obtained the order for its registration.

The learned Judge directed the appellant to file an action at the High Court of Singapore to set aside the Judgment and refused to set aside the registration.

Against that decision the appellant now appeals to the Supreme Court.

Held:
When the judgment was registered in the Johor Bahru High Court on 16 September 1975 it had already been wholly satisfied by the registrations on 22 July 1975 of the transfer of the said property to the respondent and therefore in view of s. 4(1)(a) of the Act it has been registered in contravention of the Act and under s. 5(1) the registration of the judgment should be set aside.

[Appeal allowed.]

Case referred to:
Joginder Singh, P. Suppiah and Arul Chandran v. Tara Rajaratnam [1986] 1 MLJ 105

Legislation referred to:
Reciprocal Enforcement of Judgments Act 1958, ss. 4(1)(a), 5(1)

JUDGMENT

Wan Hamzah SCJ:

On 5 May 1975 the respondent obtained judgment in the Singapore High Court in Civil Suit No. 1224/1975 in the sum of RM149,520 and costs against the appellant. On 26 August 1975 the respondent obtained an order in the Johor Bahru High Court for the registration of that judgment under the Reciprocal Enforcement of Judgments Act 1958 (the Act), and accordingly

it was registered in the Johor Bahru High Court on 16 September 1975 as Foreign Judgment No. 3/1975. On 7 June 1987 the appellant applied in the Johor Bahru High Court for an order to set aside the registration of the judgment on the ground that it had been fully satisfied when land held under Certificate of Title No. 13817, Mukim of Senai in the State of Johor was transferred to the respondent on 22 July 1975, i.e., about two months after the judgment was pronounced and about one month before the respondent obtained the order for its registration. On 5 September 1987 the Johor Bahru High Court Judge gave his decision on the application. He did not make an order to set aside the registration but directed the appellant to "file an action at the High Court of Singapore to set aside the Judgment and Order of the said Court dated 5 May 1975 in Suit No. 1224 of 1975 on the ground that the judgment has been fully satisfied". Against that decision the appellant now appeals to the Supreme Court. At the hearing of this appeal before us the respondent appeared in person and argued his case. He and Counsel for the appellant told us that the parties agreed that the facts found by the Court in the Privy Council appeal case of *Joginder Singh, P. Suppiah and Arul Chandran v. Tara Rajaratnam* [1986] 1 MLJ 105 should be accepted as the facts for the present case.

The facts are as follows. The appellant herein was the brother of one Devan, the husband of Madam Tara Rajaratnam (hereinafter referred to as Tara). Joginder Singh is an advocate and solicitor carrying on business in partnership with the respondent herein, who is also an advocate and solicitor, under the firm name of Suppiah & Singh. Joginder Singh guaranteed for the appellant an overdraft with the Hongkong and Shanghai Bank up to a limit of RM120,000. The overdraft facility was drawn up and the debit balance mounted up. About the beginning of 1974 Joginder Singh began to press the appellant to clear the overdraft or to provide security for the guarantee. He suggested that a certain property be given as the security, i.e., the land held under Certificate of Title No. 13817, Mukim of Senai, which was then registered in the name of Tara and occupied by her and her family. This property was already subject to three charges in favour of Chung Khiaw Bank to secure an overdraft on current account in the name of Devan. On 12 March 1974 Suppiah & Singh wrote to Chung Khiaw Bank stating that they acted for Tara and that Tara wished to pay off the charges on the said property by charging it for an increased amount. They asked for a statement showing the amount due to the bank on Devan's overdraft and for the title deeds to the property. On 14 March 1974 the bank replied that the amount due was RM103,658.44 with interest at 11.15% per annum.

On 30 March 1974 Joginder Singh and the respondent went to see Tara at her house. The respondent brought an undated land transfer form bearing that Tara thereby transferred the said land to the respondent in consideration of the sum of RM220,000. Tara knew that the appellant was indebted to the Hongkong and Shanghai Bank in the sum of RM110,000, and that Joginder Singh was to pay the Hongkong and Shanghai Bank RM110,000. She had learnt that the respondent was to pay Joginder Singh the sum of RM110,000. She understood that she should put the said property of hers up for security for that sum and for another sum. She queried about the "transfer" in view of the fact that it was going to be a security. The respondent replied that the security was to be by way of a transfer and he assured Tara that the appellant would pay the debt to him and she would get the said property back. The respondent also said that if the appellant could not repay the money the property could be sold to pay off the debt and the balance of the proceeds of sale could be used to buy some other property nearby. Thus Tara was induced to sign the transfer form. She was also induced to sign another document which purported to confirm that the consideration of RM220,000 referred to in the transfer form was arrived at as follows:

(a) in consideration of the respondent paying RM103,658.44 which was the amount due to Chung Khiaw Bank as at 8 March 1974 on the charges executed by Tara in favour of the bank and a further sum of RM6,341.56 (making in all RM110,000) part of which was for interest payable up to the date of the transfer and the balance was for Tara herself;

(b) a further sum of RM110,000 was in consideration of the respondent paying Joginder Singh, being the amount payable by the appellant to Joginder Singh who would be paying the Hongkong and Shanghai Bank the sum of RM110,000, being the loan granted to the appellant by the bank on the guarantee by Joginder Singh.

On 27 April 1974 Joginder Singh paid to the Hongkong and Shanghai Bank the sum of RM121,819.80 being the amount necessary to clear the appellant's over draft. On 5 July 1974 Suppiah & Singh sent to the solicitors for the Chung Khiaw Bank a sum of RM92,000, i.e., the sum necessary for the discharge of the charges executed by Tara in favour of the Chung Khiaw Bank, and Suppiah & Singh then received the title deeds from the bank. The transfer of the said property to the respondent was then registered on 22 July 1975. On 31 July 1975 the respondent executed a transfer of the said property in favour of Arul Chandran purportedly in consideration of the sum of RM220,000. In the meantime the respondent had obtained from the appellant a cheque dated 25 March 1975 for the sum of RM149,520 drawn on the Moscow Norodny Bank, which was dishonoured upon presentation. The respondent sued the appellant upon it in the High Court of Singapore, and obtained judgment dated 5 May 1975. On 15 June 1975 the appellant gave his consent to the registration of the judgment and it was registered in the Johor Bahru High Court on 16 September 1975 as Foreign Judgment No. 3/1975. Some years later the appellant came to know about the transfer of the said property to the respondent, and on 7 June 1987 the appellant applied for an order to set aside the registration.

In 1979 Tara brought an action in the High Court at Johor Bahru against Joginder Singh, the respondent and Arul Chandran. She alleged that the respondent in collusion with Joginder Singh had unlawfully transferred the said property to him and later in collusion with Arul Chandran unlawfully transferred it to him. She alleged breach of contract and/or undue influence and/or fraud on her. She asked for a declaration that the transfers were null and void and for damages. After trial the High Court gave judgment for her and awarded damages to her. Joginder Singh, the respondent and Arul Chandran appealed to the Federal Court. That appeal was dismissed. The High Court and the Federal Court were at one in holding that Joginder Singh and the respondent were guilty of fraud in that they falsely represented to Tara that the transaction of 30 March 1974 was of the nature of a security such as would enable her to redeem the property by repaying the sum of RM220,000 at any time, when it was in fact an outright sale, and further they falsely represented that it was their intention to give effect to the transaction as a security transaction, when in fact they had no intention of allowing Tara to redeem the property at any time. Both Courts found that Tara had been induced by those representations to enter into the transaction. Then Joginder Singh, the respondent and Arul Chandran appeal to the Privy Council. The Privy Council dismissed the appeal against the finding of fraud against Joginder Singh and the respondent. By consent the appeal against Arul Chandran was allowed upon agreed terms, one of which was that all allegations of fraud against him were withdrawn.

It appears that when the respondent obtained from the appellant the cheque dated 25 March 1975 for the sum of RM149,520 they meant it to be a form of security for the respondent to recover the money which he was to supply for payment to the Hongkong and Shanghai Bank of the amount due from the appellant to the Bank under guarantee by Joginder Singh.

Tara's said property was also given by her as security partly for that same money which was to be supplied by the respondent for that purpose. Therefore when the respondent got the said property transferred to himself, the result was that what was due from him in respect of the money which he had supplied was fully satisfied. It is immaterial that the respondent had resorted to an improper method in getting the property transferred to himself. The fact remains that at the time when it was transferred to him, it was a security as intended by Tara. Since the judgment which the respondent had obtained from the Singapore High Court was also in respect of the same money which he had supplied, the satisfaction subsequent to the judgment, by way of the transfer of the property also became a satisfaction of the judgment. When that judgment was registered in the Johor Bahru High Court on 16 September 1975 it had already been wholly satisfied by the registration on 22 July 1975 of the transfer of the said property to the respondent, and therefore in view of s. 4(1)(a) of the Act it has been registered in contravention of the Act and under s. 5(1) the registration of the judgment should be set aside, and we order accordingly. In our judgment it was wrong for the Judge to decline to consider the question of satisfaction of the judgment and to direct the appellant to apply to the High Court in Singapore to set it aside. There is nothing to show that it was an irregular judgment so as to justify it being set aside.

This appeal is allowed with costs here and in the Court below. The deposit should be refunded to the appellant.

Also found at [1988] 2 CLJ 427